IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9250 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAHLAD RAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9250 of 1993

MR. ANOOPKRISHNAN FOR

M/S. TRIVEDI & GUPTA for Petitioner No. 1

Ms. Archna Raval, A.G.P. for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 29/04/2004

ORAL JUDGEMENT

1. The petitioner has preferred this petition under

Article 226 of the Constitution of India chandelling inaction on the part of the respondents for not giving benefit of revision of pay scale for the post of Medical Superintendent with effect from 1st January, 1986.

2. It is contended by the learned advocate appearing for the petitioner that the petitioner was initially appointed on 6th March, 1967 as Lecturer in Surgery at M.P. Shah Medical College, Jamnagar. The said post, as per the petitioner, was equivalent to the post of Assistant Professor of Surgery. The said post was later on redesignated as Assistant Professor, Surgery. Thereafter, the petitioner was promoted as Professor of Surgery at M.P. Shah Medical College, Jamnagar with effect from 16th April, 1974. The petitioner worked as the Professor of Surgery at M.P.Shah Medical College, Jamnagar upto 11th September, 1978 and from 12th September, 1978 he was transferred to Surat as Professor of Surgery. The notification was issued by the respondent on 11th December, 1985 whereby the petitioner was transferred and appointed as Medical Superintendent at New Civil Hospital, Surat. The copy of the said notification of appointment of the petitioner as Medical Superintendent is produced at page No. 36 at Annexure C to the petition. It is averred by the petitioner that at that time pay scales of Professor of Surgery and Medical Superintendent were equivalent. Subsequently, because of 4th Pay Commission Report, there was revision in pay scale of the Medical Superintendent.

3. It is also contended by the learned advocate for the petitioner that the petitioner was working as Medical Superintendent, New Civil Hospital, Surat by virtue of the notification dated 11th December, 1985 and therefore he was entitled to get revision in pay scale in pursuance of the revision of pay scale by virtue of 4th Pay Commission Report and revised pay scale for the Medical Superintendent as per 4th Pay Commission Report was Rs.6300-7300.

4. The respondents have given effect of revision of pay scale of the petitioner vide order dated 9th May, 1991 which at page No. 41 - Annexure-E to the memo of the petition.

5. The petitioner was working as Medical Superintendent with effect from 11th December, 1985 by virtue of the aforesaid Notification from December 1985 to May, 1991. The petitioner actually worked as Medical Superintendent at New Civil Hospital, Surat. Revision of pay scale of the petitioner was also given effect by the

order dated 9th May, 1991. It is contended by the petitioner that for the reasons best known to the respondents, said revision of pay scale of the petitioner was withdrawn by the order dated 27th May,1991. The said order is at Annexure-A collectively to the memo of the petition. It is averred by the learned advocate for the petitioner that no opportunity of being heard was given to the petitioner and no reasons reasons were assigned for withdrawal of revision of pay scale of the petitioner which was given on 9th May, 1991. Thus, said withdrawal of the revision of pay scale of the petitioner was violative of the principles of natural justice and null and void.

6. The petitioner also contended that once again the respondents have accepted the plea of the petitioner and revised pay scale by the order dated 14th July, 1992 and the petitioner was given increase in the pay scale of Medical Superintendent scale as per the 4th Pay Commission Report i.e. Rs. 6300-7300. The copy of the said order is at page No. 31 at Annexure-A collectively with effect from 21st August, 1989. The grievance ventilated by the petitioner is that once again the respondents have committed an error while accepting the plea of the petitioner that he is entitled to get benefit of revision of pay scale as per the 4th Pay Commission Report with effect from 1st January, 1986 because he was already working as Medical Superintendent by virtue of the notification dated 11th December, 1985 at New Civil Hospital, Surat.

7. Learned Assistant Govt. Pleader on behalf of the respondents submitted that as per the affidavit-in-reply, paragraph no. 5, revision of pay scale of Rs.6300-7300 is applicable only to those persons who got promotion of the post of Dean and Medical Superintendent by virtue of their seniority. Second reason advanced by the respondent is that withdrawal of revision of pay scale of the petitioner is that if the junior person is holding the post then he is not entitled to revision of pay scale. Posting of junior hand shall not be treated as promotion automatically and therefore the petitioner was not entitled to revision of pay scale of Rs.6300-7300. Neither of the reasons have been supported by any Rules or Regulations much less by the Government Civil Supplies (Revision of Pay), Amendment Rules, 1991.

8. Learned Assistant Govt. Pleader could not point out anything from the the said Rules, 1991 which gives support to the version which is referred to in para 5 of the Affidavit-in-Reply.

9. I have considered the arguments advanced by the learned advocates of both the parties and looking to the facts and circumstances of the case, the petitioner ought to have been given benefit of revision of pay scale by virtue of the 4th Pay Commission Report i.e. pay scale of Rs.6300-7300 of Medical Superintendent with effect from 1st January, 1986. In fact, said revision of pay scale of Rs.6300-7300 was given to the petitioner by virtue of the order dated 9th May, 1991 of the respondents. Thereafter, there was withdrawal of said revision of pay scale of the petitioner by the order dated 27th May, 1991 which is produced at Annexure-A collectively at Page No.26. No reasons were given in the said order dated 27th May, 1991, which are referred in Paragraph No. 5 of the affidavit-in-reply. The affidavit cannot supplement the reasons which are given to the petitioner nor the Government can rectify its error by giving additional reasons in the affidavit-in-reply. Nothing was stated while withdrawing the revision of pay scale of the petitioner, vide order dated 27th May, 1991, to the effect that revision of pay scale of Rs.6300-7300 is available only to those persons who got promotion to the post of Dean/Medical Superintendent by virtue of the seniority. (Reasons advanced in paragraph no. 5 of the affidavit-in-reply are not getting support from the orders passed by the respondents.) Similarly, second reason advanced in paragraph no. 5 of the affidavit-in-reply is that if the post is held by the junior person, the same shall not be treated as promotion automatically. Thus, second reason advanced by the respondents is also not getting place in the order dated 27th May, 1991 which is at Page No.26 of the memo of the petition. Even no opportunity of being heard, was also given to the petitioner, for withdrawal of revision of pay scale, which was given to him, on 9th May, 1991 which is at page no.41 of the memo of the petition. Thus, very first withdrawal of the revision in pay scale of the petitioner of the petitioner vide order dated 27th May, 1991 was prima facie de-horse to law and violative of the principles of natural justice.

10. Wisdom must have prevailed upon the respondents and again the revised pay scale of Rs.6300-7300 was given to the petitioner, the order dated 14th July, 1992 which is at page No 31 of the memo of the petition. Thus, revision of pay scale of Rs.6300-7300 of the Medical Superintendent was given to the petitioner as per the recommendations made in the Report of the 4th Pay Commission from 21st August, 1989, instead of from 1st January, 1986. In fact, the respondents did pass the

order dated 9th May, 1991 and hence the petitioner was entitled to revision of pay scale of Rs.6300-7300 with effect from 1st January, 1986. But once again without giving any opportunity of being heard to the petitioner, the revision of pay scale of the petitioner was withdrawn by the order dated 27th May, 1991 and again was given by the order dated 14th July, 1992 but only with effect, from 21st August, 1989. It may be noted that the petitioner was working as Medical Superintendent at New Civil Hospital, Surat by virtue of the notification dated 11th December, 1985. In fact, the petitioner was working as Medical Superintendent as on 1st January, 1986. Learned Assistant Govt. Pleader could not point out anything as to why the petitioner should not be given effect of revision of pay scale, of Medical Superintendent, with effect from 1st January,1986 and why was it restricted only with effect from 21st August, 1989. It is not reflected in the affidavit-in-reply as to who is junior to whom. From Rule and Note No. 7 para 3 of Revision of Pay Scale Amendment Rules,1991 are read over but nothing was found from the affidavit-in-reply filed by the Government or objectionable to the petitioner for not getting revision of pay scale of Medical Superintendent of Rs.6300-7300 by virtue of 4th Pay Commission Report with effect from 1st January,1986. The petitioner was working as Medical Superintendent by virtue of the notification dated 11th December, 1985 and 4th Pay Commission Report was given effect from 1st January, 1986. The Gujarat Civil Services (Revision of Pay) Amendment Rules, 1991 were relied upon by the learned Assistant Government Pleader but she could not point out anything from Note No. 7, Rule -3 as to how the petitioner is deprived of benefit of revision of pay scale and as to how the Revision of Pay Scale Rules, 1991 are applicable to the petitioner.

11. Looking to the factual profile of the case and due to the cumulative effect of the orders dated 9th May, 1991, 27th May,1991 and 14th July, 1992 passed by the respondents, petitioner is entitled to revision of pay scale of Medical Superintendent as per 4th Pay Commission Report with effect from 1st January, 1986 as he was working on the said post of Medical Superintendent by virtue of the notification dated 11th December, 1985. The order dated 14th July, 1992 passed by respondents whereby revision of pay scale of Rs.6300-7300 of Medical Superintendent was given to the petitioner only with effect from 21st August, 1989 (instead of with effect from 01-01-1986), is not supported by any law or rules.

12. Thus, the orders dated 27th May, 1991 of the

respondents is hereby quashed and the order dated 14th July, 1992 whereby pay scale of Rs.6300-7300 of Medical Superintendent was given to the petitioner with effect from 21st August, 1989 is modified as the petitioner is entitled to revision of pay scale of Rs.6300-7300 of Medical Superintendent with effect from 1st January, 1986. The respondents are directed to give effect to the revision of pay scale of Rs.6300-7300 of Medical Superintendent to the petitioner, with effect from 1st January, 1986 instead of 21 August,1989, within a period of three months from the date of receipt writ of this Court. Accordingly, the petition is allowed and rule is made absolute to the aforesaid extent, with no order as to costs.

(D.N. Patel, J.)

_/\/Satwara/